

APPEAL NO. 171476  
FILED AUGUST 1, 2017

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on May 11, 2017, in (city), Texas, with (hearing officer) presiding as hearing officer. The hearing officer resolved the disputed issues by deciding that: (1) the appellant (claimant) reached maximum medical improvement (MMI) on August 31, 2016; and (2) the claimant's impairment rating (IR) is 14%. The claimant appealed, disputing the hearing officer's determinations of MMI and IR. The claimant contends the certification from the designated doctor is against the great weight and preponderance of the evidence. The respondent (carrier) responded, urging affirmance of the disputed MMI and IR determinations.

**DECISION**

Reversed and remanded.

The parties stipulated, in part, that the claimant sustained a compensable injury on September 25, 2014, in the form of a closed head injury, post-concussion syndrome including post-concussion headaches and vertigo, scalp laceration, left shoulder rotator cuff tear, left shoulder sprain/strain, right knee sprain, right knee partial patellar tendon tear, and cervical sprain/strain; and the date of statutory MMI is September 29, 2016. The claimant testified he was injured when he fell from a ladder.

**MMI/IR**

Section 401.011(30)(A) defines MMI as "the earliest date after which, based on reasonable medical probability, further material recovery from or lasting improvement to an injury can no longer reasonably be anticipated." Section 408.1225(c) provides that the report of the designated doctor has presumptive weight, and the Texas Department of Insurance, Division of Workers' Compensation (Division) shall base its determination of whether the employee has reached MMI on the report of the designated doctor unless the preponderance of the other medical evidence is to the contrary. Section 408.125(c) provides that the report of the designated doctor shall have presumptive weight, and the Division shall base the IR on that report unless the preponderance of the other medical evidence is to the contrary, and that, if the preponderance of the medical evidence contradicts the IR contained in the report of the designated doctor chosen by the Division, the Division shall adopt the IR of one of the other doctors. 28 TEX. ADMIN. CODE § 130.1(c)(3) (Rule 130.1(c)(3)) provides, in pertinent part, that the assignment of an IR shall be based on the injured employee's condition as of the MMI date considering the medical record and the certifying examination.

The hearing officer determined that the preponderance of the other medical evidence is not contrary to the opinion of the designated doctor that the claimant reached MMI on August 31, 2016, with an IR of 14%. (Dr. Y), a designated doctor appointed by the Division for purposes of MMI and IR, examined the claimant on October 17, 2016. Dr. Y certified that the claimant reached MMI on August 31, 2016, and assigned a 14% IR using the Guides to the Evaluation of Permanent Impairment, fourth edition (1st, 2nd, 3rd, or 4th printing, including corrections and changes as issued by the American Medical Association prior to May 16, 2000) (AMA Guides). Dr. Y considered and rated post-concussion syndrome, vertigo, cervical sprain/strain, left shoulder sprain/strain, left shoulder tear, right knee contusion (rather than a right knee sprain), and right knee tear. As previously noted the parties stipulated that the carrier has accepted as compensable a scalp laceration. Dr. Y did not consider or rate a scalp laceration. Because Dr. Y did not rate the entire compensable injury his certification of MMI and IR cannot be adopted. Accordingly, we reverse the hearing officer's determinations that the claimant reached MMI on August 31, 2016, and the claimant's IR is 14%.

There is one other certification of MMI/IR in evidence that certifies the claimant reached MMI and assigns an IR. On January 5, 2017, a referral doctor acting on behalf of the claimant's treating doctor, (Dr. M), examined the claimant and certified that the claimant reached MMI on September 29, 2016, and assigned an 18% IR. Dr. M based his certification on his assessment of the following conditions: cervicgia, post-traumatic headaches, left shoulder rotator cuff tear, and right knee pain. Dr. M did not rate the entire compensable injury. Accordingly, his certification that the claimant has reached MMI on September 29, 2016, with an 18% IR cannot be adopted. Because there is no certification in evidence that can be adopted we remand the issues of MMI and IR to the hearing officer for further action consistent with this decision.

### **SUMMARY**

We reverse the hearing officer's determination that the claimant reached MMI on August 31, 2016, and remand the MMI issue to the hearing officer.

We reverse the hearing officer's determination that the claimant's IR is 14% and remand the IR issue to the hearing officer.

### **REMAND INSTRUCTIONS**

Dr. Y is the designated doctor in this case. On remand the hearing officer is to determine whether Dr. Y is still qualified and available to be the designated doctor. If Dr. Y is no longer qualified or available to serve as the designated doctor, then another

designated doctor is to be appointed to determine the claimant's MMI and IR for the September 25, 2014, compensable injury.

The hearing officer is to advise the designated doctor that the compensable injury of September 25, 2014, extends to a closed head injury, post-concussion syndrome, including headaches and vertigo, scalp laceration, left shoulder rotator cuff tear, left shoulder sprain/strain, right knee sprain, right knee partial patellar tendon tear, and cervical sprain/strain. The hearing officer is to request the designated doctor to rate the entire compensable injury in accordance with the AMA Guides considering the medical record and the certifying examination.

The certification of MMI should be the earliest date after which, based on reasonable medical probability, further material recovery from or lasting improvement to an injury can no longer reasonably be anticipated considering the physical examination and the claimant's medical records. The certification of MMI cannot be later than the statutory MMI date of September 29, 2016. The assignment of an IR is required to be based on the claimant's condition as of the MMI date considering the medical records and the certifying examination and according to the rating criteria of the AMA Guides and the provisions of Rule 130.1(c)(3).

The parties are to be provided with the designated doctor's new MMI/IR certification and are to be allowed an opportunity to respond. The hearing officer is then to make a determination on the claimant's MMI and IR for the September 25, 2014, compensable injury.

Pending resolution of the remand, a final decision has not been made in this case. However, since reversal and remand necessitate the issuance of a new decision and order by the hearing officer, a party who wishes to appeal from such new decision must file a request for review not later than 15 days after the date on which such new decision is received from the Division, pursuant to Section 410.202 which was amended June 17, 2001, to exclude Saturdays and Sundays and holidays listed in Section 662.003 of the Texas Government Code in the computation of the 15-day appeal and response periods. See Appeals Panel Decision 060721, decided June 12, 2006.

The true corporate name of the insurance carrier is **ACE AMERICAN INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**CT CORPORATION  
1999 BRYAN STREET, SUITE 900  
DALLAS, TEXAS 75201-3136.**

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Margaret L. Turner  
Appeals Judge

CONCUR:

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K. Eugene Kraft  
Appeals Judge

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Carisa Space-Beam  
Appeals Judge